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**From:**

**Sent:** Wednesday, August 19, 2009 11:45:24 AM

**To:**

**Cc:**

**Subject:** RE: Notice to Indirect Partners

- Pass-thru partners, who are required to forward NBAP's to indirect partners under section 6223(h), have asked whether they may forward notice electronically.

This issue does not affect the IRS directly since section 6230(f) provides that the failure of a pass-thru partner to forward notice does not affect the applicability of the TEFRA procedures to those partners. Consequently, the issue appears to be solely an issue of whether the indirect partners may have a cause of action against the pass-thru partners.

There is no federal statute or regulation which addresses this issue in the context of section 6223, which requires the pass-thru partner to provide "a copy that notice". So the only way for the pass-thru partners to literally comply with the statute is to forward paper copies.

Federal statutes that address electronic notifications in other contexts only allow such form of notice if the recipient agrees to receive notice in this manner. In these cases the consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively the consent may be made in a paper document if it is confirmed electronically. See, e.g., Treas. Reg. § 1.6051-1(j)(2)(i).

Section 101(c)(1) of the E-Sign Act provides that information required by law to be in writing can be made available electronically to a consumer only if he or she affirmatively consents to receive the information electronically and the business clearly and conspicuously discloses specified information to the consumer before obtaining his or her consent.

Section 401 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107-147 (March 9, 2002), permits the electronic furnishing of any statement required under subpart B of part III of subchapter A of chapter 61 of Title 26 (sections 6041 through 6050T). Section 401 of JCWAA permits the electronic furnishing of all statements required under sections 6041 through 6050T, if the recipient consents to receive the statement in a manner similar to the one permitted by regulations under section 6051 or in such other manner as provided by the Secretary.

Section 6223 is outside of the sections addressed by JCWAA and the other statutes cited.